IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3923 OF 2005

Shri. M.S. Shekhawat ...Applicant

Versus

Balbir Dalip Singh & Anr ...Respondents

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Mr. Shirish Gupte, Sr. Advocate i/b Rajesh Sethia, for Applicant.

Mr. E.R. Naik, Advocate for Respondent No.1.

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 15TH JULY, 2005

P. C.:-

1. Heard both sides.

2. The applicant has mainly prayed for quashing of process issued against him in Criminal Case No. 468 of 2000 which is pending in the Court of learned Magistrate, First Class, Ist Court at Kalyan. In the said case, process has been issued against the applicant under Sections 441, 442 and 445 r.w. 34 of I.P.C. The applicant had preferred an application before the learned Magistrate for recall of process/discharge. However, in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs.**

Rooplal Jindal and others 2004 (4) Mh.L.J. 274, the learned Magistrate rejected the said application by order dated 7.3.2005. Being aggrieved thereby, the applicant has approached this Court. In view of the decision of the Supreme Court in the case of Adalat Prasad (supra), no fault can be found with the order of the learned Magistrate in rejecting the application of the applicant for recalling of process.

3. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The learned counsel for the applicant makes a statement that the necessary revision would be preferred before the concerned Sessions Court within a period of three weeks from today. The learned counsel for the respondent i.e. original complainant states that

they will not proceed with the trial for a period of three weeks from today. The learned advocate for the respondent i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision by the applicant before the Sessions Judge.

5. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

6. Application is disposed of.

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